

Federal Defenders
OF NEW YORK, INC.

One Pierrepont Plaza-16th Floor, Brooklyn, NY 11201
Tel: (718) 330-1200 Fax: (718) 855-0760

David Patton
Executive Director and
Attorney-in-Chief

Deirdre D. von Dornum
Attorney-in-Charge

May 9, 2023

Via Email and ECF

Hon. Richard M. Berman
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10001

Re: *United States v. Robert Hadden*, 20 Cr. 468 (RMB)

Dear Judge Berman,

After consultation with the government and Probation, and in accordance with Your Honor's order at the conference this morning, we write to submit the earliest possible dates on which the parties and Probation believe we can be ready for sentencing (and are available for what may be a lengthy proceeding) and to provide the concomitant disclosure dates for each potential sentencing date.

Of course, with this case, nothing is ever easy. In addition to the psychosexual report that Dr. Bardey is completing (and which the parties and Probation need to take account of in the final disclosure of the PSR and our sentencing submissions), defense counsel needs to ensure that it has adequate time to review and, where warranted, object to any proposed victim impact statements (written or oral), pursuant to Federal Rule of Criminal Procedure 32, Due Process and/or the Confrontation Clause. *See, e.g., United States v. Garigen*, 2022 WL 258568 (2d Cir. Jan. 28, 2022) (finding no error in allowing victim's parents to speak at sentencing where defendant had the opportunity to object to and respond to the statements). Counsel learned during this morning's proceeding and in subsequent conversations with the government that the deadline currently set by the government for victim impact statements is June 13, 2023, and that the government does not intend to submit all of the victim impact statements for inclusion in the Presentence Report (despite Fed. R. Crim. Pro. 32(d)(2)(B)). Accordingly, when fixing a new sentencing date, the defense asks that the Court also set a schedule for disclosure of the victim impact statements to counsel and Probation, for notice of any persons who wish to speak at sentencing, and for any objections by the defense to particular victim impact statements so that these issues can be resolved, to the extent possible, prior to sentencing. The parties will confer to try to resolve any such issues short of litigation.

The government will be ready to proceed to sentencing on June 28, 2023; the defense does not believe this will permit sufficient time for the defense to review and object to victim impact statements and proposed oral testimony, given that the defense submission would be due on June 16, 2023, and that the Court indicated at the conference today that it would not accept additional submissions related to sentencing.

All parties are available and ready to proceed on July 12, July 13, or July 24, 2023. The government asks that the sentencing proceeding start as early in the morning as feasible; the defense notes that Mr. Hadden will have to be produced from MDC Brooklyn.

Here are the relevant disclosure dates for the potential July 12, 13 or 24 sentencing dates (note that the parties have reached agreement on the dates for defense and government submissions but not for disclosure of victim impact materials):

July 12 or July 13, 2023: All Rule 32 materials to be provided to Probation and opposing counsel no later than June 2, 2023, for inclusion in the final version of the Presentence Report; victim impact statements and notice of proposed oral testimony at sentencing to Probation and defense counsel no later than June 16, 2023; defense sentencing submission, including any objections to victim impact statements, due June 23, 2023; government sentencing submission due June 29, 2023.

July 24, 2023: All Rule 32 materials to be provided to Probation and opposing counsel no later than June 16, 2023 for inclusion in the final version of the Presentence Report; victim impact statements and notice of proposed oral testimony at sentencing to Probation and defense counsel no later than June 29, 2023; defense sentencing submission, including any objections to victim impact statements, due July 7, 2023; government sentencing submission due July 17, 2023.

Respectfully Submitted,

_____/s/_____
Deirdre D. von Dornum
Michael D. Weil
Kathryn Wozencroft
Counsel for Robert Hadden

cc: Counsel of Record (by ECF)
U.S. Probation Officer Ashley Geiser (by E-mail)
Robert Hadden (by U.S. Mail)